*THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

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+WRIT PETITION No.27657 of 2005

% Dated 24-12-2007

M/s. Kumar Chemicals and Fertilizers (P) Ltd.,
Rep., by its Managing Director,
Sri Vinay Kumar Bandari, Balanagar
Hyderabad and another.

Petitioners

VERSUS

$ The Andhra Pradesh Industrial Development
Corporation Ltd., rep., by its Managing
Director, Parishrama Bhavan,
Basheerbagh, Hyderabad & another.

Respondents

! Counsel for the Petitioners: Sri Kuriti Bhaskara Rao

^Counsel for the Respondents: Sri Sriram Reddy

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? Cases referred

1. (1999) 3 SCC 657
2. AIR 1977 SC 282
3. (1989) 3 SCC 483
4. AIR 1958 SC 328
5. (1978) 1 SCC 44
6. AIR 1933 PC 63

7. 2000 (2) ALT 484

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

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Date: 24.12.2007

Between:

M/s. Kumar Chemicals and Fertilizers (P) Ltd.,
Rep., by its Managing Director,
Sri Vinay Kumar Bandari, Balanagar
Hyderabad and another.

... Petitioners

AND

The Andhra Pradesh Industrial Development
Corporation Ltd., rep., by its Managing
Director, Parishrama Bhavan,
Basheerbagh, Hyderabad & another.

... Respondents

Counsel for the petitioners : Sri Kuriti Bhaskara Rao

Counsel for the respondents : Sri Sriram Reddy

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION. No.27657 of 2005

ORDER:-

This writ petition is filed for a writ of mandamus to set aside notice dated 26.09.2005 issued by respondent No.2, whereunder the respondents invoked the provisions of Section 29 of the State Financial Corporation Act, 1951 (for short, 'the 1951 Act') for recovery of Rs.35,79,228/- from the petitioners.

Petitioner No.1 is a private limited company of which petitioner No.2, represented by two GPA holders, namely, Satish Kumar Agarwal and Vimal Kumar Agarwal, is the Managing Director. The Andhra Pradesh Industrial Development Corporation Limited, respondent No.1 (for short, 'the Corporation') extended equity of Rs.2.75 lakhs and invested preference share capital of 0.75 lakhs in petitioner No.1 company. It also sanctioned a term loan of Rs.3.50 lakhs. The amounts towards the equity and preference share capital were released during the years 1967-69 and a sum of Rs.3,30,733=59 ps towards term loan was released during the period from 19.04.1969 to 04.10.1971 (the respondents

in the additional counter-affidavit stated that the averment in their counter-affidavit that the term loan was released in April, 1978 was a mistake). As per the terms governing the parties, the respondents are entitled to charge interest @ 9.5% per annum and in the event of default, they are entitled to charge interest @ 12% per annum.

It is the common case of the parties that the petitioners failed to make repayment of any part of the loan amount till the year 1992 and as on 31.08.1992 the total outstanding amount due to the respondent – Corporation was Rs.12.50 lakhs (approximately). In the year 1992 the petitioners came to the negotiating table with the respondents on which the latter extended One Time Settlement (OTS) Scheme to the petitioners and they accordingly arrived at an amount of Rs.6,16,867=60 ps to be paid by the petitioners. The General Manager of the Corporation addressed letter dated 03.10.1992 to petitioner No.2, wherein it is informed that the total due of the loan was Rs.6,16,867=60 ps and he was requested to pay immediately 50% of the said amount and the balance amount within three months thereafter. A perusal of the record reveals that the initial payment of Rs.3,08,433=80 ps towards 50% of the OTS amount was made on 10.11.1992 and it is not in dispute that the petitioners failed to pay the balance 50% of the amount payable under the OTS scheme.

As the petitioners failed to clear the loan amount under the OTS scheme, the Corporation addressed letter dated 23.01.2001 to the District Collector, Hyderabad, to initiate action for recovery of Rs.15,63,005=80 ps found to be due as on 31.12.2001. The Tahsildar concerned issued demand notice dated 30.01.2003 to

petitioner No.2 and on receipt of the said notice he addressed letter dated 29.01.2003, wherein he referred to his discussion held with the Tahsildar of the Corporation and stated that as far as he could remember, he never borrowed any amount from the Corporation at any time and that the matter being four decades old, he was unable to trace out any record and requested the Corporation to permit him to peruse the records and supply him copies of notice and the relevant documents. Later, in reply to the Corporation's letter dated 10.03.2004, petitioner No.2 addressed letter dated 05.08.2004 stating that he was enclosing demand draft for Rs.3,09,000/- representing the outstanding balance under the OTS scheme. He made a request to revive the OTS package and close the term loan and other dues by treating the payment of said amount made in full and final settlement of the account of term loan and other dues to the Corporation. The demand draft for the said amount was enclosed, which was evidently encashed by the Corporation.

On 19.03.2005, a letter signed by one Mr. Amarnath was addressed to the Managing Director of the Corporation, wherein it is informed that petitioner No.2 was not keeping good health and that he asked him to represent on his behalf to consider his proposal for OTS at an early date with minimum levy of 6% interest as charged under original OTS scheme since 10.11.1992 on the balance outstanding amount of Rs.3,08,434/- on humanitarian grounds. The Deputy General Manager (RR & AMD) of the Corporation wrote letter dated 26.09.2005 to the Managing Director of petitioner No.1, wherein it was mentioned that an amount of Rs.35,79,228/- is due as on 31.05.2005 towards loan instalments and interest and that while

taking steps to invoke the provisions of Section 29 of the 1951 Act, by using advertisement for sale of the factory and that if the sale does not materialize and the proceeds thereof are not sufficient, they will proceed against him jointly and severally for the recovery of the outstanding amount or the shortfall as the case may be under the provisions of the 1951 Act. It is also stated that if the amounts are paid on or before 13.10.2005, the proposed action will be dropped. On 21.11.2005, one Ramesh Kumar Agarwal, claiming to be the authorized signatory, addressed letter to the Vice Chairman and Managing Director of the Corporation stating *inter alia* that as per the discussions held with the addressee on 19.11.2005 to settle the loan account, they are ready to pay the amount of Rs.16 lakhs within six months after the respondents' confirmation of the same in full and final settlement. It is also requested in the said letter to confirm the said request as full and final settlement towards loan and buy back of shares and give the bifurcation of Rs.16 lakhs towards loan and shares for the Corporation's accounting purpose and to cancel the joint venture scheme and issue the respondents No Due Certificate after the full payment from their side. The Corporation was requested to transfer the shares held by it in the name of the relatives of the addressor and return the original share certificates along with the share transfer form. The Board of Directors of the Corporation did not accept the said offer and it has decided to seize and sell the assets of petitioner No.1 company. It is specifically alleged in the counter-affidavit that the petitioners suppressed the facts relating to the abovementioned offer in the writ petition.

In the reply-affidavit filed by Sri Vimal Kumar Agarwal, the

alleged GPA holder of petitioner No.2, he pleaded that the fact that the petitioners have not made any payment from 1967 to 1992 i.e., for a period of 25 years is admitted by the Corporation and that having slept over for nearly 33 years, the Corporation is not entitled to invoke either the provisions of A.P. Revenue Recovery Act, 1864 (for short, 'the 1864 Act') or the 1951 Act. The deponent also denied the allegation made by the Corporation in its counter-affidavit that petitioner No.2 is receiving a sum of Rs.60,000/- towards rent and that having agreed to pay the amounts under OTS scheme, the petitioners paid the entire amount by 05.08.2005 and that therefore the payments made by them in the years 1992 and 2005 under the OTS scheme are nothing but towards full and final settlement. It is also further pleaded that the said payments do not extend the time for realization of their amount, since by the date of the above payments it was not a debt. A plea was also raised that the Corporation cannot invoke the provisions of Section 29 of the 1951 Act because the petitioners obtained the loan in the year 1967 and the Corporation was brought within the purview of the provisions of the 1951 Act only in the year 1986.

At the hearing, Sri Kuruti Bhaskar Rao, learned counsel for the petitioner submitted that as the entire term loan was disbursed on or before 04.10.1971, limitation for recovery of the loan amount expired in the year 1983. He further submitted that since the payments under the OTS scheme were made much after the expiry of the period of limitation, such payments or correspondence relating thereto cannot be treated as acknowledgement of debt within the meaning of Section 19 of the Limitation Act, 1963 (for short, 'the 1963 Act'). He further

contended that the provisions of the 1963 Act apply not only in respect of the proceedings before the Courts, but also to recover monies by invoking the provisions of the statutory enactments such as the 1864 Act. In support of his contention he relied upon the judgment of the Supreme Court in **State of Kerala and others v. V.R. Kalliyanikutty and another**[1].

Opposing the contentions of the learned counsel for the petitioners, Sri S. Sriram Reddy, learned Standing Counsel for the Corporation submitted that the provisions of the 1963 Act apply only to the proceedings to be initiated before the Court for recovery of the amounts and he relied upon the judgments of the Supreme Court in **The Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma**[2] and **Government of India v. Citedal Fine Pharmaceuticals, Madras and others**[3]. He further contended that assuming that the 1963 Act apply, the petitioners entered into a fresh contract in the year 2002 by accepting OTS and paying 50% of the amount on 10.11.1992 and that fresh period of limitation of 12 years commenced on that day. He further submitted that since the balance payment was made on 05.08.2004, fresh period of limitation again commenced from that date under Section 19 of the 1963 Act. Since sale notification was issued on 26.09.2005, contends the counsel, the same was within the period of 12 years from 05.08.2004.

In the light of the respective pleadings of the parties, the following points arise for consideration:

1. Whether the provisions of the 1963 Act operate as a

bar on the respondents to invoke Section 29 of the 1951 Act?

2. Whether the ratio of the judgment of the Supreme Court in **V.R. Kalliyanikutty (1 supra)** is applicable to the case on hand? and

3. If the answer to point Nos.1 and 2 supra are in the affirmative whether the whole or any part of the loan amount due from the petitioners is barred by limitation?

Re-Point Nos.1 and 2:-

If the findings on these points are rendered against the petitioners, it would not be necessary to give a finding on point No.3.

A Constitution Bench of the Supreme Court in **Bombay Dyeing & Manufacturing Company Limited v. The State of Bombay and others**[4] while interpreting Section 3(1) of the Bombay Labour Welfare Fund Act, 1953, which provided for transfer of various kinds of Funds stipulated in the said provision went into the question whether a debt, which is time barred can be the subject matter of such transfer and realized by process of law. It held that it is the settled law of this Country that the statute of limitation only bars the remedy, but does not extinguish the debt and that when the property is incapable of possession, as for example, a debt, Section 28 of the Limitation Act, 1908 (Section 27 of the 1963 Act) which provides that the period of limitation to a person for instituting a suit for possession or any property has

expired, his right to such property is extinguished, has no application. The Supreme Court further held that under Section 25(3) of the Contract Act, a barred debt is good consideration for a fresh promise to pay the amount. It is apposite to extract the relevant portion of the judgment hereunder:

> "Now, it is the settled law of this country that the statute of Limitation only bars the remedy but does not extinguish the debt. Section 28 of the Limitation Act provides that when the period limited to a person for instituting a suit for possession of any property has expired, his right to such property is extinguished. And the authorities have held - and rightly, that when the property, is incapable of possession, as for example, a debt, the section has no application, and lapse of time does not extinguish the right of a person thereto. Under S. 25 (3) of the Contract Act, a barred debt is good consideration for a fresh promise to pay the amount. When a debtor makes a payment without any direction as to how it is to be appropriated, the creditor has the right to appropriate it towards a barred debt. (Vide S. 60 of the Contract Act). It has also been held that a creditor is entitled to recover the debt from the surety, even though a suit on it is barred against the principal debtor. Vide Mahant Singh v. U Ba Yi, 66 Ind App 198: (AIR 1939 PC 110) (F); Subramania Aiyar v. Gopala Aiyar, ILR 33 Mad 30 (G) and Dil Muhammad v. Sain Das, AIR 1927 Lah 396 (H). **And when a creditor has a lien over goods by way of security for a loan, he can enforce the lien for obtaining satisfaction of the debt, even though an action thereon would be time-barred**. Vide Narendra Lal Khan v. Tarubala Dasi, ILR 48 Cal 817 at p. 823: (AIR 1921 Cal 67 at p. 68). (I). That is also the law in England. Vide Halsbury's Laws of England (Hailsham's Edition), Vol. 20, page 602, para 756 and the observations of Lindley L.J. in Carter v. White, (1883) 25 Ch D 666 at p. 672 (J) and of Cotton L.J. in Curwen v.

Milburn, (1889) 42 Ch D 424 at p. 434 (K). In American Jurisprudence. Vol. 34, page 314, the law is thus stated.

> "A majority of the Courts adhere to the view that a statute of limitations as distinguished from a statute which prescribes conditions precedent to a right of action, does not go to the substance of a right, but only to the remedy. It does not extinguish the debt or preclude its enforcement, unless the debtor chooses to avail himself of the defence and specially pleads it. An indebtedness does not lose its character as such merely because it is barred; it still affords sufficient consideration to support a promise to pay, and gives a creditor an insurable interest."

In Corpus Juris Secundum, Vol. 53, page 922, we have the following statement of the law:

> "The general rule, at least with respect to debts or money demands, is that a statute of limitation bars, or runs "against, the remedy and does not discharge the debt or extinguish or impair the right, obligation, or cause of action."" (emphasis added)

In my considered opinion, this judgment is the authority for the proposition that a time barred debt can be recovered by the creditor by enforcing the lien for obtaining the satisfaction of the debt even though an action thereon would be time barred.

A two Judge Bench of the Supreme Court in **Khadi Gram Udyog Trust v. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur**[5] held that the phrase "entire amount of rent" in Section 20 (4) of U.P. Buildings (Regulation of Letting, Rent and

Eviction) Act, 1972 would include even rent which cannot be recovered as having been time barred. It is held as under:

> "There is ample authority for the proposition that though a debt is time-barred, it will be a debt due though not recoverable, the relief being barred by limitation. In Halsbury's Laws of England (Third Edn.) Vol. 24 at p. 205, Article 369, it is stated "except in the cases previously mentioned, the Limitation Act, 1939 only takes away the remedies by action or by set-off; it leaves the right otherwise untouched and if a creditor whose debt it statute-barred has any means of enforcing his claim other than by action or set-off, the Act does not prevent him from recovering by those means. The Court of Appeal in Curwen v. Milburn (1889) 42 Ch D 424 Cotton, L.J. said:
> Statute-barred debts are dues, though payment of them cannot be enforced by action."

The sheet anchor of the petitioners' case is that in **V.R.Kalliyanikutty (1 supra)** the Supreme Court held that debts which are barred by limitation cannot be recovered by invoking the provisions of the Kerala Revenue Recovery Act, 1968 (for short, 'the 1968 Act') and therefore no coercive steps can be taken by the respondents to recover the time barred debt from the petitioners.

In order to appreciate this contention, it is necessary to closely examine the said judgment. Section 71 of the 1968 Act empowered the State Government, by notification, to declare that the provisions of the said Act shall be applicable to the recovery of amounts due from any person or class of persons to any specified institution or any class or classes of institutions and thereupon all the provisions of the said Act shall be applicable to such

recovery. In exercise of the said power, the Kerala Government issued notification by which the provisions of the said Act were made applicable to the recovery of the amounts due from any person to any bank on account of any loan advanced to such person by that bank for agriculture or non-agricultural purposes. A similar notification was also issued by the State Government making the provisions of the said Act applicable to the recovery of amounts due from any person or class of persons to the Kerala Financial Corporation. Out of the four civil appeals filed before the Supreme Court, three were related to the agricultural loans given by a bank and one appeal pertained to loans given by the Kerala Financial Corporation. A Division Bench of the Kerala High Court while dealing with the three cases arising out of the agricultural loans held that in the absence of any provision under the 1968 Act, creating a substantive right to recover time barred debts, the said Act which provides for summary recovery cannot be availed of once the period prescribed for recovery under the 1963 Act has expired and another Division Bench followed the said judgment. However, the said two Division Bench judgments were overruled by a Full Bench of the Kerala High Court out of which two civil appeals were filed. Thus, the Supreme Court decided the civil appeals together. In the cases decided by the Supreme Court, the fact that the amount sought to be recovered by invoking the provisions of the 1968 Act were barred by limitation, was not in dispute. The Supreme Court interpreted the words “amounts due” mentioned in Section 71 of the 1968 Act and held that the said expression does not include the dues which are time barred and that the person claiming recovery cannot claim such recovery, if the amounts are not legally recoverable. In so holding, the

Supreme Court relied upon the judgment of the Privy Council in **Hansraj Gupta v. Dehra Dun-Mussoorie Electric Tramway Company Limited**[6], wherein the Privy Council interpreted the words "money due" under Section 186 of the Companies Act, 1913 and held that the said phrase would only refer to those claims, which are not time barred. The Supreme Court held that the same reasoning, which was given by the Privy Council in the said case, would apply to the cases decided by it.

A close reading of the said judgment indicates that the Supreme Court has come to the said conclusion on the basis of interpretation of Section 70, in particular sub-section (3), which provides that when the proceedings are taken under the 1968 Act against any person for recovery of any sum or money due from him, such person may pay the amount claimed to avoid coercive steps under protest and he shall have the right to institute a suit for refund of the whole or part of the sum paid by him under protest. The Supreme Court held that in view of such a right having been conferred on him, the person, who paid the amount under protest, can submit in the suit that the claim against which the recovery has been made is time barred and that hence no amount should have been recovered from him. It is apposite to extract the reasoning of the Supreme Court contained in para 11 hereunder:

> "When the right to file a suit under Section 70(3) is expressly reserved, there is a necessary implication that the shield of limitation available to a debtor in a suit is also preserved. He cannot, therefore, be deprived of this right simply by making a recovery under the said act unless there is anything in the Act which expressly brings

> about such a result. The provisions of the said Act, however, indicate to the contrary. Moreover, such wide interpretation of "amount due" which destroys an important defence available to a debtor in a suit against him by the creditor, may attract Article 14 against the Act……..."

The Supreme Court, while dealing with the contention of the State of Kerala that the statute of limitation merely bars the remedy without touching the right and therefore the right to recover the loan would remain even though the remedy by way of a suit would be time barred, observed that though the right to enforce the debt by judicial process is barred, that right can be exercised in any manner other than by means of a suit and for this, it gave an example where a creditor's right to make adjustment against time barred debt exists. The Supreme Court, however, declined to apply the said principle of law by drawing the distinction on the ground that the provisions in the cases decided by it are statutory provisions for coercive recovery of "amounts due" and again reiterated preservation of right of the debtor to file a suit for refund of the amounts paid under protest. After analyzing various provisions of the 1968 Act, the Supreme Court held as under:

> "Looking to the scheme of recovery and refund under Sections 70 and 71, "amounts due" under Section 71 are those amounts which the creditor could have recovered had he filed a suit."

The judgment of the Constitution Bench in **Bombay Dyeing & Manufacturing Co., Ltd., (4 supra)** was not brought to the notice of the Supreme Court in **Kalliyanikutty (1 supra)**, though the judgment in **Khadi Gram Udyog Trust (5 supra)** which, as

already, noted made a reference to the said Constitution Bench judgment was relied upon by the State of Kerala.

On a close analysis of the judgment in **Kalliyanikutty (1 supra)** the conclusion is irresistible that it turned on the interpretation of the provisions of the 1968 Act, in particular Sections 70 (3) and 71 of the said Act. Therefore, in my considered view, the said judgment cannot be understood as laying down a different proposition from the one, which was laid down in **Bombay Dyeing & Manufacturing Co., Ltd., (4 supra)**.

In the instant case, it is necessary to notice that the respondents have not invoked the provisions of the 1864 Act. The petitioners have questioned notice dated 26.09.2005 issued by the Corporation, whereby it informed them that it is taking steps for recovery of the amounts shown thereunder by sale of their unit under Section 29 of the 1951 Act by way of advertisement in the newspapers. There is thus a fundamental difference between the cases decided by the Supreme Court in **V.R. Kalliyanikutty (1 supra)** and the present case. Section 29 of the 1951 Act is as under:

> "**29. Rights of Financial Corporation in case of default:-** (1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof (or in meeting its obligations in relation to any guarantee given by the Corporation) or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern, as well as the right to transfer by way of lease or sale and realize the property pledged, mortgaged,

hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers under sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) Where any action has been taken against an industrial concern under the provisions of sub-section (1), all costs, charges and expenses which in the opinion of the Financial Cororation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the persons entitled thereto.

(5) Where the Financial Corporation has taken any action against an industrial concern under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of the concern."

Section 71 of the 1968 Act, which fell for the interpretation of the judgment of the Supreme Court in **V.R.Kalliyanikutty (1 supra)** reads as under:

> "**71. Power of Government to declare the Act applicable to any institution:-** The Government may, by notification in the Gazette, declare, if they are satisfied that it is necessary to do so in public interest, that the provisions of this Act shall be applicable to the recovery of amounts due from any person or class of persons to any specified institution or any class or classes of institutions, and thereupon all the provisions of this Act shall be applicable to such recovery."

Section 29 of the 1951 Act does not contain the words "amounts due" nor the said Act envisaged a provision such as Section 70(3) of the 1968 Act enabling the debtor to file a suit for recovery of the amounts paid by him under protest. In this context it is worth noticeable that the 1951 Act provides for various modes of recovery of money besides Section 29. One such mode of recovery is provided for under Section 32-G, which reads as under:

> "**32-G Recovery of amounts due to the Financial Corporation as an arrear of land revenue:-** Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorized by it in writing in this behalf, may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the **amount due** to it, and if the State Government or such authority, as that Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue." (emphasis added)

Under 52-A of the 1864 Act, on the notification being issued by the State Government all loans granted and all advances made to any person by the Corporation established by or under a Central or Provincial or State Act, or Government Company etc., may be recovered in the same manner as arrears of land revenue under the provisions of the said Act.

It is obviously in such situations where Section 32-G is invoked that the judgment in **Kalliyanikutty (1 supra)** may get attracted because a similar expression "amounts due" is also contained in the said Section.

Indeed, in **N.A. Radha and others v. State of Andhra Pradesh, Revenue Department and others**[7] the learned Single Judge of this Court followed the judgment in **Kalliyanikutty (1 supra).** In that case the A.P. State Financial Corporation sought to recover the time barred loan under Section 52-A of the 1864 Act. Though the learned counsel for the petitioner relied upon the said judgment, for the reasons that the respondents have not initiated any proceedings under the 1864 Act in the instant case and that action is sought to be taken under Section 29 of the 1951 Act, the said judgment has no application to the present case.

The judgments in **The Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma (2 supra)** and **Government of India v. Citedal Fine Pharmaceuticals, Madras and others (3 supra)** cited by the learned Standing Counsel for the Corporation have not much relevance and hence they are not discussed.

On the analysis above-made, I hold that the provisions of

the 1963 Act do not bar the respondents from invoking the provisions of Section 29 of the 1951 Act to recover a time barred loan and the judgment in **Kalliyanikutty (1 supra)** has no application to the facts of the present case. Point Nos.1 and 2 are answered accordingly.

In view of the findings on point Nos.1 and 2, it is not necessary to deal with point No.3. The learned counsel for the petitioner has not argued any other point.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.35504 of 2005 filed by the petitioners for interim relief is also dismissed.

C.V. NAGARJUNA REDDY, J

Date: 24.12.2007.
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LR copies to be marked.

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[1] 1999 (3) SCC 657
[2] AIR 1977 SC 282
[3] 1989 (3) SCC 483
[4] AIR 1958 SC 328
[5] (1978) 1 SCC 44
[6] AIR 1933 PC 63
[7] 2000 (2) ALT 484